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C O N F I D E N T I A L PANAMA 000623

SIPDIS

STATE FOR WHA/CEN, L/LEI, L/WHA, AND L/OES

E.O. 12958: DECL: 07/24/2018

TAGS: [KTIA](#) [PREL](#) [PGOV](#) [KJUS](#) [PBTS](#) [PHSA](#) [SNAR](#)

SUBJECT: GOP "DEEPLY CONCERNED" ABOUT US ARREST OF
PANAMANIAN SAILORS IN 2006

Classified By: POLCOUNS BRIAN R. NARANJO. REASONS: 1.4 (B) AND (D)

¶1. (U) This is an action request; see para 8.

Summary

¶2. (C) The Ministry of Foreign Affairs (MFA) is "deeply concerned" about the situation of eight imprisoned Panamanian citizens who were arrested at sea and brought to the U.S. in 2006 after the Panamanian flagged ship M/V PERSEUS V that was stopped and boarded and found to contain a large shipment of cocaine. Post received a Dip Note from the MFA on October 24, 2007 (see para 10 for text) stating that the convictions of these men was due to "serious faults in the implementation" of the Salas-Becker Maritime Cooperation Agreement (SBA). The USG had requested GOP permission to board the ship in international waters under the SBA, and proceeded to seize the ship, cargo and crew. However, Panamanian law specifically prohibits the extradition of Panamanian citizens, and the GOP denies ever having authorized it. Post received a second DipNote on July 17, 2008, asking for a response to the first one (see para 11 for text). The issue is now becoming an internal political issue in Panama. Post recommends that the Department respond to the MFA by noting the judicial cases are closed, but propose that existing prisoner exchange mechanism such as a bilateral agreement or the Strasbourg Convention could be used to return the Panamanians to Panama to complete service of their sentences. Post also recommends that U.S. offer to consult with Panama, as provided for but never implemented in the Salas-Becker Agreement. End Summary.

Deepest Concern

¶3. (SBU) The MFA sent a first-peson diplomatic note to post on October 24, 2007 signed by First VP and FM Samuel Lewis. The DipNote referred to eight Panamanian sailors who were seized by the U.S. Coast Guard (CG) in January 2006 aboard the Panamanian flagged ship M/V PERSEUS V. The Coast Guard had requested permission from the GOP to board and search the ship under the Salas-Becker Maritime Cooperative Agreement (SBA) between the U.S. and Panama that allows each country to decline jurisdiction over its ships in international waters to the other. The Panamanians granted permission for the search, and the Coast Guard found a major shipment of cocaine

on board. The sailors were arrested, taken to the U.S., tried and convicted. All are now serving prison sentences.

¶4. (SBU) Lewis' DipNote stated that the SBA was restricted by the Constitution and laws of each side, and noted that the laws of Panama did not allow extradition of Panamanian citizens. He further claimed that the USG never sought confirmation of Panamanian agreement to the boarding, which was given orally by the then head of the Panamanian National Maritime Service (SMN) to Post's Coast Guard Liaison Officer. (Note: The then-Director of the SMN, Ricardo Traad, was arrested in 2007 on charges related to Perseus V case as well as charges concerning money laundering, drug trafficking and other crimes. End Note) Lewis expressed his "deepest concern" for the legitimacy of the judicial actions against the Panamanians, given the alleged violation of the SBA that led to their being taken to the U.S. Privately, GOP contacts have complained that Traad never had the authority to decline jurisdiction under the Salas-Becker Agreement (see para 10 for text). On July 17, 2008, Post received a second DipNote (see para 11 for text) from the MFA, requesting an official response to the first note. .

Lewis Raises with Charge

¶5. (C) For political reasons, Lewis told Charge on July 18 that the U.S. and Panama needed to put the M/V PERSEUS V matter to rest. MFA Senior Advisor Adolfo Ahumada proposed that the U.S. respond to the notes with the following formula: (a) the judicial process against these Panamanian

sailors is closed; (b) the bilateral prisoner transfer treaty may provide a mechanism for these prisoners to request their transfer to Panama to serve out their sentences; and (c) the USG would be willing to consult with the GOP to clarify procedures, as provided for under the Salas-Becker Agreement, to enhance maritime coordination and cooperation.

Former Legal Advisor: "No Good Way Out"

¶6. (C) "The way in which the PERSEUS V case was handled was a disaster all-around, a perfect example how not to implement Salas-Becker," former MFA Legal Advisor Iana Quadri told POLCOUNS and CGATT on July 24. She concurred that the MFA was looking for the best resolution so that the matter could be put behind it politically. "The lawyers for the families have no interest in these sailors. They're interested in advancing their nationalist, sovereigntist agenda," Quadri explained. Quadri felt that Ahumada's formula would provide such a solution. She cautioned, however, that Panama had not used the bilateral prisoner exchange treaty as a mechanism to return its prisoners to Panama as the bilateral agreement did not allow for sentences handed down by U.S. judges to be reduced to the maximum allowed under Panamanian law for similar crimes. Therefore, she said that Panama normally relied on the Strasbourg Convention. Quadri also explained that the Salas-Becker Agreement also called for consultations on implementation of the agreement. According to her, no such consultations have ever been held. Furthermore, no agreed upon operational procedures for implementing Salas-Becker had ever been developed internally within the GOP or agreed upon with the USG.

¶7. (C) In an effort to look forward and put the Perseus V case to rest, Quadri said she thought consultations would be a good idea. Prior to departing the MFA in February, Quadri convened GOP stakeholders from the MFA, the Ministry of the Government and Justice, the Council for Public Security and National Defense (CSPDN -- an NSC-equivalent), the National Maritime Service (SMN), the National Air Service (SAN) and the Attorney General's Office to reach agreement on internal GOP procedures and to clarify who exactly had the authority to, for example, decline jurisdiction. She did not know, however, the final results of these internal consultations

that concluded after she departed.

Comment

¶8. (C) The M/V Perseus V case is becoming a political issue in Panama. National Assembly President Pedro Miguel Gonzalez (PMG), under federal indictment in connection with the 1992 murder of a U.S. serviceman, has talked about challenging the Salas-Becker in court. Separately, two Supreme Court Magistrates have told POLCOUNS that Salas-Becker is not unconstitutional and that they would see no reason to rule differently from two previous challenges to the agreement that upheld Salas-Beckers constitutionality. The attorney for these sailors' families, Luis Barria, is the alternate representative (suplente) for Panamenista Party National Assembly Deputy Alcibades Vasquez. Barria, a nationalist, through his legal actions is providing political oxygen to PMG, normally an ardent opponent of the Panamenista Party. Given the fundamental importance of the Salas-Becker to our counter-narcotics efforts, Post recommends that the Department seriously consider the formula proposed by Ahumada -- the judicial cases against the eight Panamanians are closed and cannot be reopened, prisoner exchange agreements between Panama and the U.S. could be used to send the prisoners back to Panama (provided the prisoners request to return) to complete their sentences, and consultations to enhance future cooperation should be considered -- as a way to resolve this matter. Post understands that the U.S. Coast Guard has expressed an interest in consultations to clarify procedures under Salas-Becker.

Action Request

19. (U) Post requests language and guidance to respond to these diplomatic notes.

¶10. (SBU) Unofficial Translation of First Diplomatic Note:

"Republic of Panama
Panama, R. of P.

Ministry of Foreign Relations
Office of the Minister October 24, 2007

D.M.No.2475/A.J.

To His Excellency
William Eaton
Ambassador of the United States of America
Panama City

Mr. Ambassador:

I have the honor of addressing Your Excellency on the occasion of referring to the case of the Panamanian citizens detained on board of the Panamanian flagged ship Perseus V.

As Your Excellency is aware, the ship PERSEUS V was boarded and searched in international waters by members of the United States of America's Coast Guard, under the terms of the Salas-Becker Agreement. The said boarding resulted in the discovery of an important shipment of illicit substances on board the ship, which prompted the immediate arrest of the crew, and the confiscation of the ship and its cargo.

The Salas-Becker Agreement contains rules that regulate cases that affect ships that are registered or flagged in Panama or the United States that are located in international waters.

These rules establish, *inter alia*, the possibility that one of the Parties declines its corresponding jurisdiction in

favor of the other, with respect to the shipment, the persons on board the ship and the ship itself. This possibility is subject to the Constitution and the laws of Panama or of the United States of America permitting it to decline said jurisdiction.

In this case, the handing over of persons on board the Panamanian ship was subject to the Constitution and laws of Panama. As you are aware, these rules expressly prohibit the handing over of Panamanian nationals to foreign jurisdictions. This is an indeclinable principle that forms a part of the constitutional tradition of the Republic of Panama.

For this reason, Mr. Ambassador, I must inform you that the authorization that the United States received from the (Panamanian) National Maritime Service, verbally confirmed by the then Director General of the National Maritime Service, was strictly limited to the boarding of the ship and could not be interpreted as an authorization to transfer the Panamanian citizens on board of PERSEUS V to the United States.

In addition to the above, I must highlight that, once the United States Government received the communication dated January 13, 2006, it should have complied with the procedure for confirmation through diplomatic channels established in Article XI (5) of the mentioned Agreement, requirement that in this case was totally ignored.

Taking into account the existence of serious faults in the implementation of the procedures of the Salas-Becker Agreement in the case of the ship PERSEUS V, I kindly request that you transmit to the Illustrious Government of the United States of America my deepest concern with respect to the legitimacy of the judicial processes that the courts of your country have carried out against the Panamanian citizens CARLOS ANTONIO VERGARA DOMINGUEZ, ENRIQUE ELIOTT PINILLA, HERMOGENES OBERTO FERNANDEZ, LEBY HUMBERTO LAME AVILA, OLDEMAR ROLDAN SAMUDIO, LUIS ALBERTO PENALBA SILGADO, ROGELIO

CARVAJAL SANCHEZ, AND REINALDO JESUS SANTOS URREA.

From the circumstances that surround the transfer of these Panamanian citizens it can be deduced that it was not carried out in accordance with the rules included in the Salas-Becker Agreement, since the Panamanian State did not confirm and much less consented to the transfer of those referred to above.

I take this opportunity to reiterate to Your Excellency the assurances of y highest consideration.

/signed/
SAMUEL LUIS NAVARRO
First Vice-President
Minister of Foreign Relations"

END TEXT

¶11. (SBU) Unofficial Translation of Second Diplomatic Note:

"REPUBLIC OF PANAMA
Ministry of Foreign Relations
Panama 4 Panama

N/V A.J No. 1745

The Ministry of Foreign Relations - Directorate General of Legal Affairs and Treaties - has the honor of addressing the Honorable Embassy of the United States of America on the occasion of referring to Panamanian citizens CARLOS ANTONIO VERGARA DOMINGUEZ, ENRIQUE ELIOTT PINILLA, HERMOGENES OBERTO FERNANDEZ, LEBY HUMBERTO ALME AVILA, OLDEMAR ROLDAN SAMUDIO, LUIS ALBERTO PENALBA SILGADO, ROGELIO CARVAJAL SANCHEZ, AND REINALDO JESUS SANTOS URREA, who were detained on board of the PERSEUS V ship.

The Ministry of Foreign Relations - Directorate General of Legal Affairs and Treaties - in this regard, would like to reiterate to the Honorable Embassy of the United States of America the content of Note D.M. No.2475/A.J. of October 24, 2007, referring to the case of the mentioned Panamanian citizens, since as of this date no response had been received on this note.

The Ministry of Foreign Relations - Directorate General of Legal Affairs and Treaties - in this regard, considers appropriate to request the Honorable Embassy of the United States of America to inform the Ministry if there is any statement from its High Authorities on the content of the said communication (note) and if there is not any, reiterates to the Illustrious Government the interest of the Republic of Panama to reach a prompt solution to the situation faced by the above-indicated Panamanian citizens.

The Ministry of Foreign Relations - Directorate General of Legal Affairs and Treaties - regarding the above, sends a copy of the above-mentioned note to the Honorable Embassy of the United States of America.

The Ministry of Foreign Relations - Directorate General of Legal Affairs and Treaties - takes this opportunity to reiterate to the Honorable Embassy of the United States of America, the assurances of its highest consideration.

Panama, July 9, 2008

To the Honorable
Embassy of the United States of America
Panama City"

END TEXT
MESA